

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

ALAN RICHARD MITCHELL,

No. CV. 11-79-JE

Petitioner,

ORDER

v.

STEVE FRANKE,

Respondent.

Alan Richard Mitchell, #7965991
TWO RIVERS CORRECTIONAL INSTITUTION
82911 Beach Access Rd.
Umatilla, OR 97882-9419

Attorney for Petitioner

John R. Kroger, Attorney General
Jonathan W. Diehl, Assistant Attorney General
DEPARTMENT OF JUSTICE
1162 Court Street NE
Salem, Oregon 97310

Attorneys for Respondent

HERNANDEZ, District Judge:

Magistrate Judge John Jelderks issued a Findings and Recommendation (doc. #19) on August 24, 2011, in which he recommends the court enter a judgment dismissing the Petition for Writ of Habeas Corpus (doc. #1) with prejudice. He also recommends the court decline to issue a Certificate of Appealability on the basis that petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2) .

Petitioner timely filed objections to the Magistrate Judge's Findings and Recommendation. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure.

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a de novo determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1); Dawson v. Marshall, 561 F.3d 930, 932 (9th Cir. 2009); United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

I have carefully considered petitioner's objections and conclude that the objections do not provide a basis to modify the Findings and Recommendation. I have also reviewed the pertinent portions of the record de novo and find no error in the Magistrate Judge's Findings and Recommendation.

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CONCLUSION

The Court ADOPTS Magistrate Judge Jelderk's Findings and Recommendation (doc. #19). The Petition for Writ of Habeas Corpus (doc. #1) is dismissed with prejudice. The court declines to issue a Certificate of Appealability on the basis that petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2) .

IT IS SO ORDERED.

DATED this 25th day of October, 2011.

/s/ Marco A. Hernandez
MARCO A. HERNANDEZ
United States District Judge